IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 55 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAFAR BACHU

Versus

STATE OF GUJARAT

Appearance:

MR KETAN A DAVE for Petitioner

Mr K C Shah, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/03/2001

ORAL JUDGEMENT

This appeal has been filed under section 454 of the Criminal Procedure Code, 1973, challenging the order of the trial court confiscating two scooters seized by the Investigating Officer during the process of investigation in the case before him. As per per the case of the prosecution, the appellant and two other

companions were proceeding on two different scooters one of them was blue in colour and second one was green in colour. The scooter blue in colour was found and seized from the present appellant. It was found that certain prohibited articles were found from the said scooter and, therefore, the scooters were seized, the appellant and his two companions were arrested and they are prosecuted before the Sessions Court Bhavnagar in Sessions Case No.29/89 for the offences punishable under the provisions of Bombay Prohibitions Act as well as under the provisions of Narcotics Drugs and Psychotropic Substance Act. At the conclusion of the trial the learned Sessions Judge at Bhavnagar, while disposing of the said Sessions Case by judgment dated 26.10.1989, observed that the offence was not proved against the appellant and his companion. Therefore, the appellant and both the companion came to be acquitted. However, with respect to these two scooters, the learned Sessions Judge found that the scooters were without any number plate, that the appellant and his companion had not claimed any ownership or interest in respect of those scooters. That in fact, it was their defence that the scooter was away from them when the process of seizure and arrest of the appellant and his companion was undertaken. That in that view of the matter, it was in the fitness of things to confiscate the said scooters. On the aforesaid observations, the learned Sessions Judge directed that the two scooters be confiscated to the State. Feeling aggrieved by the said judgment and order of the learned Sessions Judge in Sessions Case No.29/89, the appellant has preferred this appeal before this court under section 454 of the Criminal Procedure Code, 1973. It has been mainly contended here that when the scooter was seized from the custody of the appellant and when the appellant came to be acquitted,the court below ought to have passed an order for the return of custody of the scooter to the appellant. In the alternative, it has also been claimed that the trial court ought to have passed an order for further enquiry into the matter. It has also been contended that it was not enough for the trial court to leave the matter to be decided by the Civil Court, that in the above view of the matter, the present appeal be allowed and the order of the trial court with respect to the confiscation of the scooter be set aside and the muddamal scooter be ordered tobe restored to the possession of the appellant.

2. The appeal was admitted. Mr K C Shah, learned APP has appeared for the State. I have heard the learned Advocates for the parties and perused the papers. In fact, the learned Advocates for the parties have taken me

through the R & P including the panchnama under which the scooter was seized.

3. It appears from the record that the scooter was seized at the relevant point of time on 14.10.1988 at 12.05 midnight hours at Bhavnagar. It appears from the panchnama produced before the trial court that appellant no.1 had claimed ownership over the scooter which is blue in colour at the relevant point of time. Technically speaking, it would be an admission on the part of the appellant with respect to the said scooter since it was made before the police. However, the fact remains that the appellant had narrated the event before the police at the earliest possible time. It seems that further questions have not been put to the appellant when his statement was recorded under Section 313 of the said Code. The trial court could have placed appropriate questions to the appellant with respect to the ownership and possession in respect of the said scooter. That does not appear to have been done with respect to the scooter blue in colour while recording further statement of appellant under section 313 of the said Code. The present appellant appears to have not been offered opportunity to explain his case with respect to the title or possession in respect of that scooter. Therefore, I am of the opinion that the trial court has committed error in law in directly ordering confiscation of the scooter blue in colour. Therefore, the order of the trial court with respect to that scooter requires interference in this appeal by this court.

4. It is well settled that whenever, there is something doubtful about Muddamal property, it is always open to the trial court to hold an enquiry and at such enquiry, the prosecution may be at liberty to adduce any material before the court concerned with respect to the questions which were raised before the court at the relevant point of time for the purpose of disposal of the muddamal property.

5. At the same time, it may also be open for the accused person to adduce material before the court concerned in order to enable the court, before which the enquiry may be pending, to ascertain as to what should be legal and valid order for the disposal of the muddamal property. Same way, if there is any third party claiming ownership or possession in respect of that property, then that party may be at liberty to adduce material before the court for the said purpose in order to show his ownership, possession or interest in respect of that property. This would be a fair process under which it

may be ascertained as to who is really the person entitled to possession of the said muddamal property involved in the said offence.

6. In the aforesaid facts and circumstances of the case, I am of the opinion that this is a case in which the aforesaid order of confiscation of muddamal scooter blue in colour may be set aside and the trial court should be directed to undertake further enquiry for the disposal of the muddamal scooter. It is not clear as to whether or not on other appeal has been preferred with respect to the second scooter, green in colour. Therefore, I am not here to express any opinion with respect to the order passed by the trial court with respect to that scooter green in colour.

7. With the above clarification, this appeal is partly allowed. The judgment and order of the trial court confiscating the scooter blue in colour is set aside. The trial court is directed to hold an enquiry and decide the claim of the appellant with respect to the scooter blue in colour and then pass appropriate order according to law. Since the matter is very old, it would be in the fitness of things that the trial court dispose of the said enquiry as early as possible preferably within a period of three months from the date of receipt of this order. Office shall return the R & P to the trial forthwith. Direct Service is permitted.

17.3.2001 [D P Buch, J.]
msp